RECORD, CASE No. 13,587.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 383. 58

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

CHALMER M. C. PRENTICE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 22, 1889.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Monday, the twenty-fifth day of March, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and thirteenth year.

WM. H. BRADLEY, *Clerk.*

CHALMER M. C. PRENTICE
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY. } Trespass on the Case.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the nineteenth day of October, 1886, came the plaintiff, by his attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons, and also at the same time filed his bond for costs in said above-entitled cause; which said præcipe and bond are in the words and figures following, to wit:

2 *Præcipe.*

United States Circuit Court, Northern District of Illinois.

CHALMER M. C. PRENTICE, Plaintiff,
vs.
LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, Defendant.

The clerk of said court will issue a summons in the above-entitled cause in a plea of trespass on the case to the damage of the plaintiff in the sum of fifty thousand (50,000.00) dollars, and direct the same to the marshal to execute, and make it returnable to the December term of said court, A. D. 1886.

W. A. FOSTER,
Plaintiff's Attorney.

October 19th, 1886.

(Endorsed:) Filed this 19th day of Oct., A. D. 1886. Wm. H. Bradley, clerk.

3 *Bond for Costs.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, December Term, A. D. 1886.

CHALMER M. C. PRENTICE, Plaintiff,
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, Def't. } Case.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against said plaintiff.

Dated this 18th day of October, A. D. 1886.

C. A. VAUGHAN.
DAN'L SHELLEY.
W. A. FOSTER, 79 *Clark.*

(Endorsed:) Filed Oct. 19, A. D. 1886. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the nineteenth day of October, 1886, came the plaintiff, by his attorney, and filed in said clerk's office his declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

Declaration.

In the Circuit Court of the United States in & for the Northern District of Illinois.

CHALMER M. C. PRENTICE
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY. } Trespass on the Case.

Chalmer M. C. Prentice, plaintiff, by W. A. Foster, his attorney, complains of The Lake Shore and Michigan Southern Railway Company, defendant, of a plea of a trespass on the case, and avers that he (pl'ff) is now and for many years last past has been a resident and citizen of the State of Ohio, and that said defendant is a duly organized and incorporated company under and by virtue of the laws of the State of Illinois, with the power to sue and liability of being sued by its corporate name, and that by its organization and incorporation within said State of Illinois and under and by virtue of the laws of such State it is a citizen of the said State of Illinois and liable to be sued as such by its corporate name.

5 That said def't is engaged in operating a railway through the States of Ohio, Indiana, Illinois, and other States, and

through the northern district of said State of Illinois, as the same is determined by act of Congress dividing the same into two U. S. court districts designated as the northern and southern districts of said State, and that said railway is operated over and into the county of Cook, in said State, and to the city of Chicago therein; that said def't is engaged in transferring passengers and freight over the said line of road and conducting a business as common carrier in said States.

That on Oct. 12th, 1886, said pl't'ff, being accompanied by his wife, took passage on a regular passenger train of def't at the city of Norwalk, in the State of Ohio, for the city of Chicago and State of Illinois, having first fully paid defendant the full fare for such passage and been accepted as passengers on said train, and as such passenger plaintiff was entitled to be transferred and carried to said city of Chicago free from interruption, interference, insult, or indignity on the part of the agents, employees, or officers of def't; that during said passage from Norwalk to Chicago plaintiff properly demeaned himself as became an unobtrusive passenger and
6 was guilty of the commission of no crime or of the doing of any act warranting his arrest or confinement, all of which was well known to the agents and employees of def't engaged in the management and operation of said train. Plaintiff avers that he was accompanied on said trip by many persons of his acquaintance and on said trip was introduced to and formed the acquaintance of a great many others residing in different localities and in different States; that some of said passengers with whom plaintiff was acquainted had purchased tickets over a portion of def't's road which they did not desire to use and which they desired to sell to plaintiff, and said tickets not being issued to any person by name, but by their terms being good for one trip on defendant's road between certain stations, this plaintiff purchased certain of said tickets while on def't's train and while passing through the State of Indiana, as he had a just and perfect right to do; that upon so doing the conductor of said train, one James Carn by name, an agent and employee of defendant, dispatched by telegraph to the agents, employees, and officers of defendant at Chicago the occurrance above herein set forth relative to the purchase of said tickets and requested and ordered from the servants of defendant aforesaid that an officer be dispatched to meet the train on which plaintiff was a passenger, to the end that pl't'ff might be ar-
7 rested, and the agents, representatives, and officers of def't, well knowing the object of said conductor and all well knowing that plaintiff had committed no criminal offense and was not legally liable to arrest and punishment, wrongfully and unlawfully sought out one M. Murphy, an employee of def't, acting as a policeman, and sent him to the station of South Chicago, there to meet the train upon which plaintiff was a passenger, in order that plaintiff might be arrested for the pretended offense of purchasing said tickets as aforesaid, and for no other purpose whatever; and plaintiff charges that said conductor and said special officer or policeman started through said train (the same having been boarded at

South Chicago by said officer upon its arrival), and, approaching plaintiff in an angry, boisterous, and excited manner, and in a tone of voice sufficiently loud to be heard in all parts of the car, pointed plaintiff out to said officer and ordered his (plaintiff's) arrest; that plaintiff was seized by said Murphy and rudely searched for weapons in the presence of the entire car-load of passengers, and was ordered into the baggage car by said conductor, while said Murphy announced in an insolent, boisterous, and authoritative manner that plaintiff was a prisoner; that plaintiff frequently implored of said conductor and officer to inform him for what he had been arrested, but was gruffly refused such information.

8 Pl't'ff alleges that said officer forcibly took plaintiff out of said passenger coach, where he was arrested, into another car and compelled him to sit next to the side of said car while he (said officer) occupied the position of a watch and sentinel upon the seat nearest to the isle of said car; that after plaintiff's removal to said second car both of said employees of def't, to wit, said conductor and officer, particularly the former, made such remarks to plaintiff and to others as to apprise the occupants of said car that plaintiff was under arrest, solely and only to disgrace and humiliate plaintiff among his fellow-passengers.

Pl't'ff avers that by profession he is a physician, and during said day had often been called doctor by his friends and acquaintances in the presence and hearing of said conductor; whereupon and after plaintiff's said arrest, which was without warrant or other authority of law, said conductor, well knowing that plaintiff had great concern and anxiety for his said wife because of the great shock sustained by her on account of pl't'ff's arrest, approached pl't'ff's said wife and in a sneering, vindictive, and devilish manner and tone of voice inquired, "Where's your doctor now?" well knowing that such insulting and brutal language would worry, harrass, and torture plaintiff. Plaintiff avers that he was not

9 permitted to go to the seat occupied by his wife at any time after his arrest, and when he asked permission, when nearing the depot at Chicago, to assist his wife in the care of four pieces of hand baggage such request was indignantly refused, nor was plaintiff permitted to deliver to his said wife the baggage check for the trunk containing the apparel of plaintiff and his said wife; that said train arrived at the depot between 8 and 9 o'clock at night, and upon so arriving, in the presence of plaintiff's friends and acquaintances and also in the presence of the passengers upon said train and many others, without any knowledge whatever as to the cause of said arrest of plaintiff, he was delivered by said officer to a policeman of the city of Chicago, who was instructed by said conductor and said officer making said arrest to take plaintiff to the station-house, which was accordingly done by said policeman, and plaintiff was forcibly carried to the Harrison-street station, in said city of Chicago, and there remained for a long time awaiting the preferring of some criminal charge against him, and that after waiting a great while said Carn, conductor as aforesaid, appeared and when required to state upon what charge plaintiff should be

booked at such station reluctantly and after long hesitation
10 demanded that plaintiff should be booked as disorderly, at the time well knowing that plaintiff at no time had been guilty of being a disorderly person or of the commission of any offense whatever during said trip from said city of Norwalk to Chicago; that plaintiff was required to give the sum of $200.00 as bail for his appearance at said station on the following day, and gave said bail and was thereupon released, and on the following day appeared for trial in accordance with the conditions of said bonds, and after waiting a long time and no one appearing to prosecute plaintiff for said alleged offense or any other offense plaintiff was, by Justice Meech, a justice of the peace in & for Cook Co., Ills., duly discharged, and pl'tiff says that said charge has not been renewed or any other proceedings had thereunder, and that the same is fully terminated.

Plaintiff avers that in all acts and wrongs done and performed by the said officers, agents, and employees of defendant as herein set forth the same was done and performed by them and each of them while at and about the performance of the duties respectively assigned to and required of such agents, officers, and employees, and such wrongful acts so done and performed to plaintiff's damage and injury were so done and performed in the direct line of their duty, and defendant is legally liable and responsible therefor.

11 That by reason of the wrongs suffered by plaintiff and for which defendant is liable plaintiff has suffered damages in loss of time in defending against said wrongful arrest and detention in the sum of twenty-five (25) dollars; that he was required to hire an attorney and pay other expenses incident to a defense to said false charge in the sum of twenty-five (25) dollars, and also by reason of the premises the plaintiff has been and is greatly injured in his credit and reputation and brought into public scandal and disgrace with and among his neighbors, friends, and other good citizens, and many acquaintances, knowing of said wrongs of def't's agents, have suspected and believe and still do suspect and believe that plaintiff has been and is guilty of some serious crime warranting his arrest and ill treatment as herein set forth; and, further, plaintiff has suffered great pain of body and anxiety of mind by means of the premises and otherwise greatly injured in his circumstances to the damage of the plaintiff in the full sum of fifty thousand (50,000.00) dollars, and therefore he brings his suit, &c.

CHALMER M. C. PRENTICE, *Plaintiff*,
By W. A. FOSTER, *His Attorney*.

(Endorsed:) Filed Oct. 19, 1886. Wm. H. Bradley, clerk.

12 On the same day, to wit, on the nineteenth day of October, 1886, there issued out of said clerk's office a writ of summons in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, *Northern District of Illinois*, } ss:

The United States of America to the marshal of the Northern District of Illinois, Greeting:

We command you to summon the Lake Shore and Michigan Southern Railway Company, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December next, to answer unto Chalmer M. C. Prentice of a plea of trespass on the case to his damage, as is alleged, of fifty thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 19th day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the 111th year.

[SEAL.]

13

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ personally upon the within-named Lake Shore and Michigan Southern Railway Company by reading the same to and within the presence and hearing of A. G. Amsden, superintendent of the western division of said railway, and by delivering to him a true copy thereof this 19th day of October, A. D. 1886.

I did not serve the president of said company, being unable to find him within my district.

F. H. MARSH,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

(Endorsed:) Filed Oct. 20th, A. D. 1886. Wm. H. Bradley, clerk.

14 Afterwards, to wit, on the twentieth day of December, 1886, came the defendant, by its attorney, and filed in said clerk's office its plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the Circuit Court of the United States in and for the Northern District of Illinois.

CHALMER M. C. PRENTICE }
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY CO'Y. }

And now comes the said defendant, by Pliny B. Smith, its attor-

ney, and defends the wrong and injury, when, &c., and says that it is not guilty of the said supposed grievance above laid to its charge or any or either of them in manner and form as the said plaintiff in his said declaration thereof has alleged against it; and of this it puts itself upon the country, &c.

PLINY B. SMITH,
Attorney for Defendant.

(Endorsed:) Filed Dec. 20, 1886. Wm. H. Bradley, clerk.

15 Afterwards, to wit, on the twenty-eighth day of February, 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

CHALMER M. C. PRENTICE
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY. } Case.

It is ordered by the court that this cause be continued.

16 Afterwards, to wit, on the third day of January, 1889, in the December term of said court, 1888, in the records of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHALMER M. C. PRENTICE
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY. } Trespass on the Case.

Now come the parties, by their attorneys, and upon issue joined herein thereupon comes a jury of good and lawful men, to wit, W. A. Gupe, William Hall, Bernard Glavey, Joseph Pollak, J. R. Hayes, B. H. Nichols, E. M. Donohue, D. Ryan, C. M. Stephan, William A. Butters, W. O. Osgood, and J. S. Myers, who were all duly elected, tried, and sworn well and truly to try said issue, and, after hearing the evidence and the arguments of the counsel and receiving the instructions of the court, the jury retired to consider of their verdict, and, by agreement of the parties, by their attorneys, in open court, the jury when they shall have agreed upon a verdict may sign and seal the same and deliver it to the officer in charge and disperse.

17 Afterwards, to wit, on the fourth day of January, 1889, in the December term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHALMER M. C. PRENTICE
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY. } Trespass on the Case.

Now come again the parties, by their attorneys, and the jury in this behalf empaneled and sworn this day returned into court their sealed verdict, wherein they say: We, the jury, find the defendant guilty and assess the plaintiff's damages ten thousand dollars; and thereupon the defendant, by its attorney, moves the court for a new trial herein.

On the same day, to wit, on the fourth day of January, 1889, there was filed in said clerk's office the verdict of the jury in said entitled cause; which said verdict is in the words and figures following, to wit:

Verdict.

We, the jury, find the defendant guilty and assess the damages at ten thousand dollars.

JOS. S. MYERS, *Foreman.*

(Endorsed:) Filed Jan'y 4, 1889. Wm. H. Bradley, clerk.

18 Afterwards, to wit, on the eleventh day of February, 1889, in the December term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

CHALMER M. C. PRENTICE
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY. } Trespass on the Case.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the defendant for a new trial herein, and after hearing the arguments of the counsel the court takes the same under advisement.

19 Afterwards, to wit, on the twenty-fifth day of March, 1889, came the plaintiff, by his attorney, and filed in said clerk's office a remittitur in said entitled cause; which said remittitur is in the words and figures following, to wit:

Remittitur.

In the Circuit Court of the United States for the Northern District of Illinois.

CHALMER M. C. PRENTICE
vs.
LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

Comes now the above-named Chalmer M. C. Prentice, by W. A. Foster, his attorney, and by leave of court remits from the verdict returned by the jury in this cause the sum of four thousand (4,000) dollars, and asks that judgment be entered for the excess of said sum, to wit, the sum of six thousand (6,000) dollars.

March 25th, 1889.

CHALMER M. C. PRENTICE, *Plaintiff*,
By W. A. FOSTER, *His Attorney*.

(Endorsed:) Filed March 25, 1889. Wm. H. Bradley, cl'k.

20 On the same day, to wit, on the twenty-fifth day of March, in the adjourned March term of said court, 1889, in the records of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Judgment.

CHALMER M. C. PRENTICE
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY. } Trespass on the Case.

Now come the parties, by their attorneys, and the plaintiff, by his attorney and with leave of the court, enters a remittitur in the sum of four thousand dollars upon the verdict heretofore entered herein, and the court, being now fully advised upon the motion of the defendant for a new trial of this cause, overrules the same and awards judgment. It is thereupon considered and adjudged by the court that said plaintiff do have and recover of said defendant the sum of six thousand dollars, his damages, being the amount of the verdict less said remittitur of four thousand dollars, together with his costs and charges in this behalf expended, amounting to —— dollars and —— cents, and that he have execution therefor; and on motion of the defendant, by its attorney, it is ordered that the time to file a bill of exceptions herein be extended thirty days.

21 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record; which exceptions are in the words and figures following, to wit:

Bill of Exceptions.

In the Circuit Court of the United States for the Northern District of Illinois.

CHALMERS M. C. PRENTICE *vs.* LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.	Trespass on the Case.

Be it remembered that on the trial of this cause, at the December term, A. D. 1888, the plaintiff, to sustain the issues on his part, gave in evidence as follows, to wit, but before the introduction of any evidence upon the trial the defendant, through its counsel, admitted that the arrest of plaintiff was wrongful and that he (plaintiff) was entitled to recover actual damages therefor:

JAMES E. CURRAN, being duly sworn, testified: I am a passenger conductor on defendant's railroad; have been in regular service since 1885; was in charge of train upon which plaintiff and wife rode about the 12th day of October, 1886, on which the plaintiff was arrested. It was a regular train, but carried excursion passengers, the tickets being good from that day until the following
22 Monday. One part of the ticket was taken off from the point of departure to Chicago and the other part left for the return. There was no name on the ticket. As conductor of that train I told the agent at Miller's Station, which is sixteen miles beyond the Illinois line, in the State of Indiana, to telegraph the agent at South Chicago to have an officer for me on the arrival of my train at South Chicago. An officer was there on my arrival. I think his name was Murphy. I pointed out the plaintiff to the officer.

There was then read in evidence on the part of the plaintiff the deposition of F. D. HOLLIDAY as follows:

I am a farmer, residing in Huron county, Ohio. I was on board the excursion train on defendant's railroad October 12, 1886, from Norwalk to Chicago and return. I got aboard the cars at Monroeville, Ohio, having purchased my ticket at Bellevue, Ohio. I didn't sign any ticket or any other paper. I bought three excursion tickets from the ticket agent of the defendant at Bellevue; the tickets were to Chicago and return, and were good for six or seven days. The plaintiff was on the train while I was going to Chicago. I saw him on the train at Bellevue. The plaintiff's conduct was quiet and gentlemanly. I saw him arrested by a policeman. The plaintiff was accompanied by his wife. At Chicago I helped carry off his luggage.

23 There was next read in evidence on the part of the plaintiff the deposition of Mrs. LYSANDER HOLLIDAY as follows:

I live in Huron county, Ohio, and have been acquainted with the plaintiff from a boy six years old. I was on the excursion train on

the defendant's road October 12, 1886, and saw the plaintiff on that train. He was taken from it by a policeman at Chicago. I think it was about fifteen miles from Chicago when he was placed under arrest. His behavior up to the time of his arrest was perfectly gentlemanly. I remember the conductor coming along and speaking to the plaintiff's wife about a quarter of an hour after the arrest. My son and myself helped the plaintiff's wife with her luggage at Chicago. I helped her across the track to the other side. From the time the plaintiff was arrested until we arrived in Chicago he was in charge of the policeman.

There was next read *on* evidence on the part of the plaintiff the deposition of FREDERICK W. GRAVES as follows:

I reside in Huron county, Ohio. I am a common laborer. I know the plaintiff and made an arrangement with him whereby he should buy two tickets from Chicago to Norwalk, Ohio, in the cheapest manner. My daughter and grand-daughter were in Chicago and I wanted them to come down and see me. I wanted him to get two tickets, and directed him where to find my daughter
24 and give the tickets to her with my request.

CHALMER M. C. PRENTICE, the plaintiff, being duly sworn, testified on his own behalf as follows:

I have been a physician for eighteen years, making a specialty of the eye and ear. I resided in Norwalk, Ohio, on October 12, 1886, having resided there a great many years, with the exception of three years that I was practicing in New Orleans. I was surgeon for the Baltimore and Ohio Railway Company from 1872 to 1875. In company with my wife I took passage from Norwalk, Ohio, to Chicago on October 12, 1886. Previous to starting I was requested by Mr. Graves to purchase a couple of return coupons from Chicago for his daughter and granddaughter, and by a nephew of Mr. Newman to get him two tickets if I could, he saying that I would see Mr. Newman in Chicago. I was acquainted with a great many of the passengers and passed among a number of them during the trip and said, "Are you going to use your return part from Chicago again?" Most of them said they were, but I told a number if they were not that I would purchase some of them; that I wanted them for some friends. Before we arrived at Chicago I had these tickets delivered, and I paid as high as $3 for one ticket. The price of these excursion tickets was $5, originally, from Norwalk to Chicago
25 and return. We were nearing Chicago when I left the rear car, where I had been talking with friends, to go two cars forward and bid an acquaintance good evening—a Mr. Ferry and his wife. I had scarcely arrived at their seat and was beginning to talk to them when a policeman came up and slapped me very heavily on the breast, on my side, and on my hip pockets, and asked me if I had any weapons. I said no, and asked, "What is this for?" He replied, "You will find out when you get in Chicago." I was very much agitated, and, without any opportunity to explain he started me back through the car towards the rear of the train'

The conductor came up with the policeman at the time he arrested me and said, "That is the man. Arrest him!" The conductor followed the policeman as I was taken back through the car past my wife. As we passed my wife's seat I was very much agitated, because I saw she was excited. She knew nothing except seeing me brought into the car. The conductor stopped and said to her, "Where is your doctor now?" He then took me beyond my wife, not allowing me to sit down with her, about six or seven seats on the other side of the car, placing me next to the window and sitting down and holding me in there. The conductor said, "Take him to the baggage car. Our orders are to take them to
the baggage car." I said I was a first-class passenger
26 and proposed to ride in the car somewhere and he repeated
the order a second time. At this juncture a gentleman from Sandusky attempted to interfere—Mr. Zurhorst. He said substantially that he considered this arrest was an outrage, and that I was being abused. The conductor and the policeman told him if he didn't shut up they would arrest him, too. Mr. Zurhorst told me in the presence of the officer that if I needed his services to come to the Palmer house at nine o'clock the next morning. I was confined in that seat under arrest during the balance of the trip. I asked the policeman the privilege of conversing with my wife several times. He constantly refused me. My wife had my overcoat and she threw it over my lap. I was very much excited and was in a perspiration and told her to take it back until I needed it. When we arrived in Chicago I asked the privilege of getting my overcoat again and assisting my wife to get off the train. This was positively refused me. She had four quite large pieces of luggage in her seat besides my overcoat. I was rushed off the train. In bringing me back through the cars the policeman placed his hand upon my back repeatedly as if to hurry me along and quite rudely, hitting me on the back, as policemen sometimes will when they arrest a culprit. He took
me off the car in the Rock Island depot and without any
27 conversation passed me into the hands of a policeman named
Poffinholtz, and as I passed my wife I told her to see Mr. Shelby, the only acquaintance I could think of to be found that night, and ask him to look me up and help me out of my trouble. It was a drizzling, rainy night, about half past eight, and the policeman took me over to the station at Harrison street. Then Poffinholtz said, "I declare I don't know what I am to book you for. I shall have to go back and find out what this is for." So I turned and walked back with him again to the Rock Island depot. He spoke to the porter or somebody under the direction of the officer and immediately took me back to the police station again. There I was taken back through one room into another and was obliged to remove my coat and vest and disrobe still further slightly and they searched me for tickets, which were in my overcoat pocket. I didn't have them with me. In a moment I heard Mr. Shelby through the partially open door inquire where Dr. Prentice was and then they took me out. The conductor was sent for and said I had been buying tickets and the officer said, "You cannot book him for buying

tickets. It is no offense." The conductor then said, "Well, it is against the rules of the company, so we will book him for disorderly conduct." The lieutenant of police made out a bond for two or three hundred dollars for me to
28 appear at nine the next morning before Justice Meech, acting police magistrate. We were all there in the morning—Mr. Shelby, my wife, and myself, with an attorney. The case was called and the defendant railroad did not appear, and there being no prosecution the case was dismissed by Justice Meech. The police magistrate's book contained the entry: "Lake Shore & Michigan Southern Railroad against Chalmers M. C. Prentice; occupation, physician; white." I think it gave my birthplace as Cincinnati; "booked by Curran for disorderly conduct." That was the end of my prosecution. I employed counsel to defend me, paying him about $25; it was more than $10. I was delayed all the following day. Out of feeling, I did not go to see Mr. Graves' daughter, whose eyes I was to examine. In the profession of an oculist the value of time is variable. Sometimes a day's work would amount to very little and sometimes an operation or two to several hundred dollars. I did not deliver the tickets I bought, because I was ashamed to meet the party after my name appearing in the morning papers as being arrested. Mr. Graves' daughter was also to have been a patient of mine. I only delivered Mr. Newman two tickets. Mr. and Mrs. Ferry, whom I had gone forward to see when I was arrested; were old friends of my father and mother, but new acquaintances of mine. I had been introduced to them by my father, a
29 physician, before leaving. My arrest was made in their presence. I knew, perhaps, twenty people in the excursion.

On cross-examination the witness testified that before living in Norwalk, Ohio, he lived in New Orleans and before that in Norwalk. Never resided in any other place except in Monroeville from boyhood until about 1875; am a physician and surgeon also. I graduated in the spring of 1872 and have been practicing since then most of the time, but not all; was out of business between two and three years. I have followed some mercantile business and for a short time was interested in the theatrical business. I was a manager of several small companies and have done some acting myself, perhaps in the neighborhood of two years. My prospective point at the time was to see Mrs. Graves in Chicago. I think I was bound for San Francisco also for the purpose of introducing a system of refraction that I bought out about five years ago—a system of examining the eyes. I went to San Francisco then, after remaining in Chicago perhaps two weeks partially arranging business. I had some business with Otto Young & Company, who did some grinding of glasses for me and were at that time handling a refraction chart in connection with the journal. It is a chart that Dr. Holmes is using now and was using then. I also visited Dr. Gardner, an oculist opposite the Palmer house, in connection with my
30 system of refraction. I introduced the system to Dr. Lyman J. Ware and find that he is still using it. I had about twenty

acquaintances on the train. I made their acquaintance on the train. They were men, but I am quite positive there were one or two ladies. I got acquainted perhaps with two or three of them; not more. I passed through the train to ask a number of people whether they were going to use their return tickets. I did not confine this inquiry exclusively to people I was acquainted with. The people who asked me about tickets all lived in Norwalk. Six people offered me tickets which I took. I think I went into three cars asking people about these tickets. I do not now think I accosted a lady on the subject at all. I think a lady came to me and asked me if I wanted to buy a ticket. I did this, perhaps, two or three times during the trip through Indiana. I paid from one to three dollars for each of the tickets I bought. I think these were about half-rate tickets. Before I was arrested I did not know the conductor had telegraphed ahead. I do not remember how I found it out, but it was after my arrest. The policeman kept me in my seat by sitting down on the outside, and when I attempted to get out he put up his hand to stop me. He did this, perhaps, two or three times. I was very much excited on account of my wife and wished to get to her to
31 pacify her. She was in the same car. I was about the middle and she was nearer the front. I was not taken to the baggage car. One lady came to me and offered to return the money I had paid her and take back the ticket. She wanted to stop the thing by doing this. It became known immediately what I was arrested for, evidently to this lady. Officer Poffinholtz treated me very nicely. The other officers at the station treated me as courteously as they would receive any disorderly man. My friend Mr. Shelby came there and bailed me out within an hour. I was kept under guard. It was all over that night at about ten o'clock. In the morning I got out of court at about eleven o'clock, I think. I had a carriage for my wife, and I couldn't tell my expenses exactly.

On redirect examination the witness testified that no warrant was served on him nor shown to him nor referred to.

Defendant's counsel asked the witness this question: "Did you ever make any claim or demand on the railroad company for satisfaction in reference to this matter?"

To which question the plaintiff, by his counsel, then and there objected and the court sustained the objection; to which ruling of the court defendant's counsel then and there excepted.

JOSEPH POFFINHOLTZ, a witness on behalf of the plaintiff, testified:

I am a Chicago police officer. I remember taking the
32 plaintiff from an officer and taking him to the Harrison-street station October 12, 1886. I probably was notified by the telegraph operator at the Lake Shore station that there was a prisoner aboard of the train, and I probably received the information between seven and eight o'clock in the evening. A messenger told me that Conductor Curran wanted a policeman when the train came in at eight o'clock. I was there and took charge of the pris-

oner from the other officer; that officer was a town.-of-Lake policeman, dressed in uniform. South Chicago is in the town. of Lake. I was detailed at the depot on special service and am there now.

EDMUND ZURHORST, a witness on the part of the plaintiff, testified:

I live in Sandusky, Ohio, and have known the plaintiff since the day of this occurrence, October 12, 1886. I knew his family a number of years before, who they are and all about them. I was then an internal revenue officer. I am now in the coal business and have other business. I was present when the plaintiff was arrested, and when he was under arrest I was sitting in my seat. The plaintiff had occupied a part of it several times. We were a long time going and, of course, uneasy, going backwards and forwards. I saw the policeman come into the train and go down past into another car. Being idle, I went along to see what it was about, through the second car into the third car. The conductor indicated the
33 plaintiff, with whom I had been talking a few minutes before, and directed his arrest, saying that that was the gentleman that he wanted arrested. The officer put his hands over his clothes to see if he had anything concealed, I suppose. He took him from that car into the car immediately in the rear, past where the lady was sitting that I knew to be his wife, and put him in a seat further back and sat on the outside of the seat and stayed there. I had a conversation with the conductor or officer and made quite a racket about it. I told them I considered it an outrage. They threatened to arrest me, and I said I didn't want any better fun. I would like to have them arrest me under such circumstances. I said this gentleman wasn't doing any harm to anybody. He was attending to his business. They threatened to arrest me if I didn't shut up, but I did not, and they did not arrest me. As the conductor came down along the aisle he said to the plaintiff's wife, "What do you think of your doctor now?" in a manner rather offensive, to my notion. I said that was a damn pretty way to talk to a man's wife when he was in trouble.

On cross-examination the witness testified that he saw the plaintiff undertake to get up from beside the policeman several times, but the policeman prevented him.

The foregoing was all the evidence introduced on the trial of this cause.

34 And thereupon the court charged the jury as follows:

"GENTLEMEN OF THE JURY: The defendant company ran an excursion train from Norwalk, Ohio, to Chicago and back, the train leaving Norwalk on the 12th of October, 1886. The plaintiff bought excursion tickets for himself and wife, which entitled them to passage both ways. A number of people appear to have boarded the train at Norwalk, many of them being acquaintances of the plaintiff. Between Norwalk and Chicago the plaintiff asked a

number of those passengers if they expected to return on that train, intending, he says, if they did not to purchase their tickets to oblige certain friends of his who had relatives in Chicago who desired to go to Norwalk. Those of the passengers not wishing to return upon the train sold to the plaintiff their excursion tickets for the return passage. He testified that he needed but four tickets, but after he had made these inquiries and solicitations six were offered him and he took six, although he needed but four. Some thirty miles east of Chicago the conductor in charge telegraphed to Chicago asking that a police officer meet his train on its arrival. When the train was approaching Chicago, just at what point the evidence fails to show, a police officer boarded it. The conductor pointed out the plaintiff to the police officer and directed him to arrest the
35 plaintiff, which the officer did without a warrant. The plaintiff inquired why he was arrested, for what offence he was arrested, and he was informed that he would learn on his arrival in Chicago. He was not informed why he was arrested. He was taken by this police officer and the conductor back into the train in a car in the rear of where he was arrested and there compelled to take a seat away from his wife, and the police officer occupied the seat between the plaintiff and the aisle. The plaintiff was not allowed to occupy a seat by his wife; he was not allowed to go to her and speak to her. On their way back from where the plaintiff was arrested, while the police officer was forcing the plaintiff ahead of him, the conductor was just in the rear of both of them, and when they passed the plaintiff's wife the conductor remarked to her, 'What do you think of your doctor husband now?' The police officer, at the time he made the arrest, put his hands upon the plaintiff and felt for weapons and asked him if he was armed. This arrest was made in a public place, in the presence of passengers, and the plaintiff was held in arrest until he arrived at Chicago. When he arrived in Chicago he was not permitted to assist his wife off the train with her luggage and was forced to the police station on Harrison street, when the police officer and the conductor were there informed that he had
36 committed no offense by buying tickets or offering to buy tickets upon the train, and that he could not be held for that reason. The conductor directed that he be held on the charge of disorderly conduct. There is no evidence that he was guilty of disorderly conduct. There is no evidence at all that he had violated any law of the State or that he had violated any regulation of the company. The conductor never went to the plaintiff and told him, 'You are violating the regulations of the company and you must stop; if you don't, I will put you off the train.' Nothing of that kind occurred. On the contrary, when he was arrested for doing nothing that the law did not allow him to do, he was not so much as informed of the cause of his arrest."

"You have heard what occurred when the plaintiff was taken to the police station. He was searched, required to disrobe himself in part, remove part of his clothing, and he was detained there until a friend arrived and signed his bail bond. After that he was allowed

to depart, and the charge which was lodged against him was not prosecuted."

"There is no evidence before you indicating or tending to prove that the conductor's conduct was disapproved of by the company's officers. You have been told that there was no evidence that the company ratified the conduct of the conductor. There is no
37 evidence that anything that was done by the conductor in charge of the company's train met its disapproval. It was not the duty of the plaintiff, after being thus illegally treated, to go to the officers of the company and ask them to compensate him. The officers of the railroad company are entitled to no more consideration than any other trespasser. The company was a trespasser; it had outraged the plaintiff's rights, and he was not bound by the law to approach them in their offices or elsewhere with a request that they compensate him, and whatever right he may have for damages is not in the slightest degree impaired by his failure to thus approach the officers of the corporation."

"You are also told that there was no evidence that the officers followed this prosecution up. The only evidence before you is that the prosecution was abandoned."

"That is all there is in this case on that point. The plaintiff is entitled to damages, and the only question for you to determine is how much shall those damages be. It is admitted by the defendant that it trespassed upon the plaintiff's rights and that he is entitled to compensation. The facts, as I have related them to you, are not disputed at all; there is no evidence disputing them."

"It is also said that this witness Zurhorst was guilty of conduct in the presence of the plaintiff's wife which — more unbecoming on the part of a gentleman than was the conduct of the con-
38 ductor in addressing the plaintiff's wife as he did in the plaintiff's presence. Even if that were true, it is no defense for this defendant. Even if you believe that witness was guilty of conduct of that kind, it does not lie in the mouth of this defendant, when it is called upon to compensate for its own injuries, to say that some one else also said something which he should not have said, nor does it go for anything against the plaintiff in this case that he has a right of action against this police officer and the conductor. It is true that he might maintain an action against them, but that is no reason why he is not entitled to full compensation for his injuries against the defendant for what the conductor did or caused to be done."

"Now, if you believe the statements which have been made by the plaintiff and the witnesses who testified in his behalf, and they are not denied, then he is entitled to a verdict which will fully compensate him for the injuries which he sustained, and in compensating him you are authorized to go beyond the amount that he has actually expended in employing counsel; you may go beyond the actual outlay in money which he has made. He was arrested publicly without a warrant and without cause; and if such conduct as has been detailed before you occurred, such as the remark that was

addressed by the conductor to the wife in the plaintiff's pres-
39 ence, in compensating him you have a right to consider the humiliation of feeling to which he was thus publicly subjected. If the company, without reason, by its unlawful and oppressive act, subjected him to this public humiliation, and thereby outraged his feelings, he is entitled to compensation for that injury and mental anguish."

"I am not able to give you any rule by which you can determine that; but, bear in mind, it is strictly on the line of compensation. The plaintiff is entitled to compensation in money for humiliation of feeling and spirit as well as the actual outlay which he has made in and about this suit."

"And, further, after agreeing upon the amount which will fairly compensate the plaintiff for his outlay and injured feelings, you may add something by way of punitive damages against the defendant, which is sometimes called smart money, if you are satisfied that the conductor's conduct was illegal (and it was illegal), wanton, and oppressive. How much that shall be the court cannot tell you. You must act as reasonable men and not indulge vindictive feelings towards the defendant."

"If a public corporation, like an individual, acts oppressively, wantonly, abuses power, and a citizen in that way is injured, the citizen, in addition to strict compensation, may have, the law says, something in the way of smart money; something as punish-
40 ment for the oppressive use of power."

"If you find for the plaintiff the form of your verdict will be:

"We, the jury, find the defendant guilty and assess the plaintiff's damages at — dollars."

"You have got to find for the plaintiff, because the defendant admits that there is a right of action."

And the defendant then and there excepted to that part of the instructions given by the court to the jury in the foregoing charge which is in the following language:

"There is no evidence before you indicating or tending to prove that the conductor's conduct was disapproved of by the company's officers. There is no evidence that anything that was done by the conductor in charge of the company's train met its disapproval."

And the defendant then and there excepted to that part of the instructions given by the court to the jury in the foregoing charge which is in the following words:

"It is admitted by the defendant that it trespassed upon the plaintiff's rights, and that he is entitled to compensation." * * *

"In compensating him you are authorized to go beyond the amount that he has actually expended in employing counsel; you may go beyond the actual outlay in money which he has made."

And the defendant then and there excepted to that part of
41 the instructions given by the court to the jury in the foregoing charge which is in the following words:

"Now, if you believe the statements which have been made by the

plaintiff and the witnesses who testified in his behalf, and they are not denied, then he is entitled to a verdict which will fully compensate him for the injuries which he has sustained, and in doing that you are authorized to go beyond the amount that he has actually expended in employing counsel. You may go beyond the actual outlay in money which he has made. He was arrested publicly, without a warrant and without cause, and if such conduct as has been detailed before you occurred, such as the remark that was addressed by the conductor to the wife in the plaintiff's presence, in compensating him you have the right to consider the humiliation of feeling to which he was thus publicly subjected."

And the defendant then and there excepted to that part of the instructions given by the court to the jury in the foregoing charge which is in the following words:

"If the company, without reason, by its unlawful and oppressive act, subjected the plaintiff to this public humiliation, thereby causing this outrage to his feelings, he is entitled to compensation for that injury and mental anguish."

And the defendant then and there excepted to that part of
42 the instructions given by the court to the jury in the foregoing charge which is in the following words:

"And, further, after agreeing upon the amount which will fairly compensate the plaintiff for his outlay and injured feelings, you may add something by way of punitive damages against the defendant, which is sometimes called smart money, if you are satisfied that the conductor's conduct was illegal (and it was illegal), wanton, and oppressive."

And the defendant then and there excepted to that part of the instructions given by the court to the jury in the foregoing charge which is in the following words:

"If a public corporation, like an individual, acts oppressively, wantonly, abuses power, and a citizen is in that way injured, a citizen, in addition to strict compensation, may have, the law says, something in the way of smart money, something as punishment for this oppressive use of power."

And the defendant then and there excepted to that part of the instructions given by the court to the jury in the foregoing charge which is in the following words:

"The officers of the railroad company are entitled to no more consideration than any other trespasser."

And the defendant then and there excepted to that part of the instructions given by the court to the jury in the foregoing
43 charge which is in the following words:

"The company was a trespasser; it had outraged the plaintiff's rights."

And the defendant then and there excepted to that part of the instructions given by the court to the jury in the foregoing charge which is in the following words:

"It does not lie in the mouth of this defendant, when it is called upon to compensate for its own injuries, to say that some one else also said something which he should not have said."

And the defendant, by its counsel, then and there excepted to so much of the instructions given by the court to the jury as instructed them that if the conduct testified to in the case occurred the jury had a right, in compensating the plaintiff, to consider the humiliation of feeling to which he was subjected.

And the defendant, by its counsel, then and there excepted to so much of the instructions given the jury by the court in the said charge as instructed the jury that under the evidence in said cause punitive or exemplary damages could be awarded to the plaintiff.

And the defendant, by its counsel, then and there excepted to so much of the instructions given the jury by the court in said charge as assumed to hold that the defendant was responsible and liable in damages for all the acts of the conductor, and that all the in-
44 juries complained of were caused or inflicted, and that the defendant was called upon in this action to compensate the plaintiff for the injuries sustained by him.

And thereupon the jury rendered a verdict against the defendant assessing the damages for the plaintiff at $10,000.

Whereupon the defendant, by its counsel, then and there moved the court to set aside the verdict so rendered and to grant a new trial in this cause, and filed the said notice in writing, with the following reasons in writing therefor for this motion, to wit:

1. That the court erred in instructing the jury as follows:

"There is no evidence before you indicating or tending to prove that the conductor's conduct was disapproved of by the company's officers. There is no evidence that anything that was done by the conductor in charge of the company's train met its disapproval."

2. That the court erred in instructing the jury as follows:

"It is admitted by the defendant that it trespassed upon the plaintiff's rights and that he is entitled to compensation." And in adding an instruction thereto as follows: "In compensating him you are authorized to go beyond the amount that he has actually expended in employing counsel. You may go beyond the actual outlay in money which he has made."

3. That the court erred in instructing the jury as follows:
45 "Now, if you believe the statements which have been made by the plaintiff and the witnesses who testified in his behalf, and they are not denied, then he is entitled to a verdict which will fully compensate him for the injuries which he has sustained, and in doing that you are authorized to go beyond the amount that he has actually expended in employing counsel. You may go beyond the actual outlay in money which he has made. He was arrested publicly, without a warrant and without cause; and if such conduct as has been detailed before you occurred, such as the remark that was addressed by the conductor to the wife in the plaintiff's presence, in compensating him you have a right to consider the humiliation of feeling to which he was thus publicly subjected."

4. That the court erred in instructing the jury, in the absence of any testimony tending to prove the authorization, ratification, or approval by the defendant of any of the acts of the conductor complained of, in the following words:

"Now, if you believe the statements which have been made by the plaintiff and the witnesses who testified in his behalf, and they are not denied, then he is entitled to a verdict which will fully compensate him for the injuries which he has sustained, and in doing that you are authorized to go beyond the amount which he has actually expended in employing counsel. You may go be-
46 yond the actual outlay in money which he has made. He was arrested publicly, without a warrant and without cause; and if such conduct as has been detailed before you occurred, such as the remark that was addressed by the conductor to the wife in the plaintiff's presence, in compensating him you have a right to consider the humiliation of feeling to which he was thus publicly subjected."

5. That the court erred in instructing the jury, in the absence of any testimony tending to prove the authorization, ratification, or approval by the defendant of any of the acts of the conductor complained of, in the following words:

"If the company without reason by its unlawful and oppressive act subjected the plaintiff to this public humiliation, thereby causing this outrage to his feelings, he is entitled to compensation for that injury and mental anguish."

6. That the court erred in instructing the jury as follows:

"And, further, after agreeing upon the amount which will fairly compensate the plaintiff for his outlay and injured feeling, you may add something by way of punitive damages against the defendant, which is sometimes called smart money, if you are satisfied that the conductor's conduct was illegal (and it was illegal), wanton, and oppressive."

7. That the court erred in instructing the jury, in the absence of any testimony tending to prove the authorization, ratifica-
47 tion, or approval by the defendant of any of the acts of the conductor complained of, in the following words:

"And, further, after agreeing upon the amount which will fairly compensate the plaintiff for his outlay and injured feelings, you may add something by way of punitive damages against the defendant, which is sometimes called smart money, if you are satisfied that the conductor's conduct was illegal (and it was illegal), wanton, and oppressive."

8. That the court erred in instructing the jury, in the absence of any testimony tending to prove the authorization, ratification, or approval by the defendant of any of the acts of the conductor complained of, in the following words:

"If a public corporation like an individual acts oppressively, wantonly, abuses power, and a citizen is in that way injured, a citizen, in addition to strict compensation, may have, the law says, something in the way of smart money, something as punishment for this oppressive use of power."

9. That the evidence in the case does not warrant the recovery by the plaintiff of punitive damages, and it was error to instruct the jury that in any aspect of the case punitive or exemplary damages could be allowed to the plaintiff.

10. That the court erred in instructing the jury that if the
48 conduct testified to in the case occurred the jury had a right in compensating the plaintiff to consider the humiliation of feeling to which he was subjected.

11. That the court erred in instructing the jury as follows:

"The officers of the railroad company are entitled to no more consideration than any other trespasser."

12. That the court erred in instructing the jury as follows:

"The company was a trespasser; it had outraged the plaintiff's rights."

13. That the court erred in instructing the jury as follows:

"It does not lie in the mouth of this defendant, when it is called upon to compensate for its own injuries, to say that some one else also said something which he should not have said."

14. That the court erred in its instructions to the jury in assuming and holding that the defendant was responsible and liable in damages for all the acts of the conductor, and that all the injuries complained of were caused or inflicted by the defendant, and that the defendant was called upon in this action to compensate the plaintiff for the injury sustained by him.

15. That the verdict is contrary to law.

16. That the verdict is contrary to the evidence in the case.

49 17. That the verdict is so excessive in amount as to show that the jury were unlawfully influenced by passion and prejudice in rendering it.

18. That the verdict is excessive.

Whereupon the plaintiff, by his counsel and by leave of court, remitted from the verdict returned by the jury in this cause the sum of $4,000, and asked that judgment be entered for the excess of said sum, namely, for the sum of $6,000.

Whereupon the court denied defendant's motion to set aside the verdict so reduced as aforesaid and to grant a new trial in this cause, and gave judgment on the verdict so reduced by the remittitur as aforesaid against the defendant.

To which decision of the court in denying such motion to set aside the verdict and for a new trial of this cause the defendant, by its counsel, then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record, the defendant tenders this its bill of exceptions, and prays that the same may be signed and sealed by the judge, which is done accordingly this 23 day of April, A. D. 1889.

W. Q. GRESHAM, [SEAL.]
Circuit Judge.

(Endorsed:) Filed Ap'l 23, 1889. Wm. H. Bradley, clerk.

50 Afterwards, to wit, on the twenty-fourth day of April, 1889, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The Lake Shore and Michigan Southern Railway Company, as principal, and John Newell, as surety, are held and firmly bound unto Chalmer M. C. Prentice in the full and just sum of eight thousand dollars, to be paid to the said obligee, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 22nd day of April, in the year of our Lord one thousand eight hundred and eighty-nine (1889).

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in said court between said Chalmer M. C. Prentice, plaintiff, and the said The Lake Shore and Michigan Southern Railway Company, defendant, a judgment was rendered against the said obligor, The Lake Shore and Michigan Southern Railway Company, and the said The Lake Shore and Michigan Southern Railway Company having ob-
51 tained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Chalmer M. C. Prentice, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Lake Shore and Michigan Southern Railway Company shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Corporation Seal.]

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY,
By JOHN NEWELL, *President.* [SEAL.]
JOHN NEWELL. [SEAL.]

Attest: NICHOLAS BARTLETT,
Ass't Secretary.

Approved by—
W. Q. GRESHAM,
Circuit Judge.

(Endorsed:) Filed Ap'l 24, 1889. Wm. H. Bradley, clerk.

52 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein

Chalmer M. C. Prentice is the plaintiff and The Lake Shore and Michigan Southern Railway Company is the defendant, as the same appear from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this eighteenth day of May, 1889.

WM. H. BRADLEY, *Clerk.*

53 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between Chalmer M. C. Prentice, plaintiff, and The Lake Shore and Michigan Southern Railway Company, defendant, in an action of case, a manifest error hath happened, to the great damage of the said The Lake Shore and Michigan Southern Railway Company, defendant, as by its complaint appears, and it being fit that the error, if any there has been, should duly be corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1889, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22nd day of April, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the 113th year.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

[Endorsed:] Supreme Court of the United States. Lake Shore and Michigan Southern Railway Company, plaintiff in error, *vs.* Chalmer M. C. Prentice, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

54 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Chalmer M. C. Prentice, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1889, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Chalmer M. C. Prentice is plaintiff and The Lake Shore and Michigan Southern Railway Company is defendant, to show cause, if any there be, why the error in the judgment mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter Q. Gresham, circuit judge, this 22nd day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

WALTER Q. GRESHAM.

55 [Endorsed:] Supreme Court of the United States. —— —— *vs.* —— ——. Citation to October term, A. D. 1889. Service accepted of within citation this April 25th, 1889. W. A. Foster, att'y for pl't'ff.

Endorsed on cover: Case No. 13,587. N. Illinois C. C. U. S. No. 383. The Lake Shore and Michigan Southern Railway Company, plaintiff in error, *vs.* Chalmer M. C. Prentice. Filed July 22, 1889.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891. TERM No. 383.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILROAD COMPANY,
Plaintiff in Error,

vs.

CHALMER M. C. PRENTICE,
Defendant in Error.

In error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

BY

GEO. C. GREENE.

Supreme Court of the United States.

OCTOBER TERM, 1891. TERM No. 383.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, *Plaintiff in Error,* AGAINST CHALMER M. C. PRENTICE, *Defendant in Error.*	In Error to the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF THE CASE.

This action of *trespass on the case* was commenced on the 19th day of October, 1886, in the Circuit Court of the United States for the Northern District of Illinois.

The declaration charged that Mr. Prentice, defendant in error, was on the 12th day of October, 1886, a passenger traveling with his wife and other persons on excursion tickets, upon a regular passenger train of plaintiff in error, from Norfolk, Ohio, to Chicago; that he purchased return tickets of other passengers on said train, whereupon the conductor of said train, upon its arrival at South Chicago, caused him to be arrested by a police officer for the pretended offense of purchasing said tickets, and that he was rudely treated by said officer and conductor; that upon arrival at Chicago

station he was taken by said officer to a police station, where he gave bail for his appearance the next morning, when he appeared, and no one appearing to prosecute him, he was discharged; that all the said wrongful acts and wrongs done by said officers, agents and employees of the plaintiff in error were done in the direct line of their duty, and said plaintiff is legally liable and responsible therefor. (Rec., 3, 4 and 5.)

There is no allegation that any act of the conductor or officer was wanton or malicious.

The plaintiff in error pleaded *the general issue*, and the cause came on to be tried before Hon. Walter Q. Gresham and a jury, on the 4th day of January, 1889. Upon the trial it was admitted by the plaintiff in error that the arrest of Mr. Prentice was wrongful and that he was entitled to recover actual damages therefor. Record, 10.)

Evidence was introduced showing the arrest and detention, as alleged, and tending to show he was rudely treated by the officers who arrested him. (Rec., 10–15.)

There was no evidence that the plaintiff in error authorized or ratified the acts of the conductor or officer.

The Court, among other things, charged the jury: "*After agreeing upon the amount which will fairly compensate the plaintiff for his outlay and injured feelings, you may add something by way of punitive damages,* * * * if you are satisfied the conductor's conduct was illegal (and it was illegal), wanton and offensive." Rec., 18.) And the plaintiff then and there duly excepted to such charge. (Rec., 19.)

The Court also charged the jury: "If a public corporation, like an individual, acts offensively, wantonly abuses power, and a citizen in that way is injured, the citizen, in addition to strict compensation, may have,

the law says, something in the way of smart money; something as punishment for the oppressive use of power." (Rec., 18.) To this charge plaintiff in error duly excepted. (Rec., 19.) The jury rendered a verdict for $10,000.00 in favor of the defendant in error.

The plaintiff in error moved in said Circuit Court for a new trial, whereupon the defendant in error filed a remittitur remitting from the verdict $4,000.00, and the Court overruled said motion, and judgment was entered for $6,000.00, besides costs, on the 25th day of March, 1889, and the cause was brought to this Court by writ of error.

The question involved is whether the plaintiff in error, a railroad corporation, is liable in this action for exemplary damages for an act of its agent which it is not alleged or proved was ever authorized or ratified. The question is raised upon exceptions to the charge of the Court. (Rec., 19.)

SPECIFICATION OF ERRORS.

We submit that the Court below erred:

First. In charging the jury as follows: "If the company without reason, by its unlawful and oppressive act subjected him (the plaintiff below) to this public humiliation, and thereby outraged his feelings, he is entitled to compensation for that injury and mental anguish. I am not able to give you any rule by which you can determine that; but, bear in mind, it is strictly on the line of compensation. The plaintiff is entitled to compensation in money for humiliation of feelings and spirit, as well as the actual outlay he has made in and about this suit." (Rec., 18.) Exception thereto. (Rec., 20.)

Second. In charging the jury as follows: "And

further, after agreeing upon the amount which will fairly compensate the plaintiff for his outlay, and injured feelings, you may add something by way of punitive damages against the defendant, which is sometimes called smart money, if you are satisfied that the conductor's conduct was illegal (and it was illegal), wanton and oppressive." (Rec., 18). Exception thereto. (Rec., 19.)

Third. Also, in charging the jury as follows: "If a public corporation, like an individual, acts oppressively, wantonly abuses power, and a citizen is in that way injured, the citizen, in addition to strict compensation, may have, the law says, something in the way of smart money, something as punishment for the oppressive use of power." (Rec., 18.) Exception thereto. (Rec., 19).

Fourth. In ruling and holding that the case was one in which the jury were at liberty to award, in addition to compensatory damages, exemplary or punitive damages.

Fifth. Also, in its charge to the jury that: "You have been told that there was no evidence that the company ratified the conduct of the conductor. There is no evidence that anything that was done by the conductor in charge of the company's train met its disapproval." (Rec., 17.) Exception thereto. (Rec., 18).

BRIEF OF ARGUMENT.

I.

The railway company, although liable in compensatory damages for the act of its servant, is not subject to punishment, nor liable in punitive damages for his evil motive and intent.

Exemplary damages are awarded and imposed as punishment of the willful wrong-doer.

Sedgwick on Dam., 8th Ed., §§ 360, 363, 369.
Field on Dam., § 69.
Stimson vs. Railroad, 1 *Wall. Jr.*, 164, 170.
M. P. R. R. Co. vs. Humes, 115 *U. S.* 512.
Milwaukee, etc., Ry. Co. vs. Arms, 91 *U. S.* 489.
Day vs. Woodworth, 13 *How.* 363, 371.
Cook vs. Ellis, 6 *Hill* (*N. Y.*) 466.

II.

The infliction of exemplary damages can only be justified, if at all, upon considerations of public policy, as punishment of a wanton defendant. They are awarded upon the theory that the punishment will fall upon the offender, and not upon one innocent of evil intent or motive.

The master should not be punished for the evil intent or motive of his servant, by awarding against him exemplary damages. The measure of his liability is compensation for the injuries inflicted by the *act* of the servant.

McGuire vs. Golden Gate, 1 *McAllister* 104–109.
Fay vs. Parker, 53 *N. H.* 342–397.
Sedgwick on Dam., § 378.
The Amiable Nancy, 3 *Wheat.* 546.
Detroit Port vs. McArthur, 16 *Mich.* 447–454.
Hagan vs. P. & W. R. R. Co., 3 *R. I.* 88.
Houston & T. C. Ry. Co. vs. Cowser, 57 *Tex.* 293–306.
Pollock & Co. vs. Gault, 69 *Ala.* 378-9.

Burns vs. Campbell, 71 *Ala.* 271.
Grund vs. Van Vleet, 69 *Ill.* 478–481.
Boulard vs. Calhoun, 13 *La. Ann.* 445–449.
Craker vs. C. & N. W. Ry. Co., 36 *Wis.* 657.
Haines vs. Schultz, 50 *N. J. Law*, 481.
Ackerson vs. Erie Ry., 32 *N. J. Law.*
G. W. Ry. vs. Miller, 19 *Mich.* 306.
Cleghorn vs. N. Y. C. & H. R. R. Co., 56 *N. Y.* 44.
Denver & Rio Grande R. Co. vs. Harris, 112 *U. S.* 597.
Smith vs. Smith, 62 *Ill.* 493–6.
Morawetz on Corp., 1*st Ed.*, § 252.

III.

Whatever rule of damages would apply in a suit against a natural person, ought to apply in a suit against a corporation.

Jeffersonville R. R. Co. vs. Rogers, 28 *Ind.* 1–7.
Hamilton vs. Third Ave. Rd. Co., 53 *N. Y.* 25–29.
Turner vs. North Beach R. R. Co., 34 *Cal.* 594.
Denver & Rio Grande R. Co. vs. Harris, 112 *U. S.* 597.

ARGUMENT.

Under the charge of the Court the jury were authorized to award punitive damages, "if the conductor's conduct was illegal, wanton and oppressive." Whether the company had in any way or manner authorized, approved or ratified the wanton or illegal act was, under this charge, immaterial, and the company might be subjected to punishment if the jury found only the fact that its servant had been guilty of an illegal, wanton act.

This case presents the question whether, in addition to full compensatory damages, exemplary damages may be recovered against a corporation defendant for such an act of its servant as would subject the servant to such damages where the act was not authorized or ratified by the corporation, and the corporation had not been negligent in employing the servant.

The plaintiff in error, the railway company, contends that there is no reason or principle which will warrant a recovery of punitive damages in such a case, and thus *punish* a party guiltless of intentional wrong.

It is not alleged or proven that the defendant authorized or caused to be done any of the acts complained of, or that it was ever informed thereof prior to the commencement of this action. It is not alleged or proven that down to the time of the commencement of the action, nor at any time, it ratified or approved the conductor's action. No claim that the Company authorized, ratified or approved the conductor's conduct was made upon the trial or submitted to the jury.

I.

WHILE IT IS CONCEDED THAT THE RAILWAY COMPANY IS RESPONSIBLE FOR THE ACT OF ITS AGENT, THE CONDUCTOR, AND BOUND TO MAKE COMPENSATION TO THE PARTY WHO SUFFERED INJURY BY REASON OF HIS ACTS, IT OUGHT NOT TO BE HELD TO BE PUNISHABLE FOR THE MOTIVE OR INTENT OF THE AGENT. IT IS THE ACT AND NOT THE MOTIVE THAT IS IMPUTABLE TO THE PRINCIPAL, THE RAILWAY COMPANY.

THAT EXEMPLARY DAMAGES ARE AWARDED AS PUNISHMENT FOR THE UNLAWFUL INTENT, AND THE GROUND OF THEIR ALLOWANCE IS THE EVIL MOTIVE OF DEFENDANT, SEEMS TO BE SETTLED BY AUTHORITY.

Sedgwick on Damages, 8th Ed., section 360.

Field on Damages, sec. 99: The principal is not liable to exemplary damages for the negligence of his servant or agent, unless there was express or implied authority of the principal for the negligence, or an approval or endorsement of the same by the principal.

In *Stimpson vs. Railroad*, 1 *Wall, Jr.*, 164, 170, Mr. Justice Grier said: Exemplary damages "are inflicted wholly with a view to punish and make an example of the defendant." And again, in *Day vs. Woodworth*, 13 *How.*, 363, 371, in delivering the opinion of this Court, the same Justice says: Such damages are permitted by "way of punishment or example."

In *M. P. R. R. Co., v. Humes*, 115 *U. S.*, 512, and *Milwaukee, etc., Railway Co. vs. Ames*, 91 *U. S.* 489, the Court quote and approve the above statements in the opinion of Mr. Justice Grier.

In *Cook vs. Ellis*, 6 *Hill* (*N. Y.*) 466, the Court says: "We concede that smart money allowed by a jury and a fine imposed at the suit of the people depend on the same principle."

II.

THE INFLICTION OF EXEMPLARY DAMAGES IS HELD TO BE JUSTIFIED UPON CONSIDERATIONS OF PUBLIC POLICY AS PUNISHMENT OF A WANTON DEFENDANT, AND TO PREVENT REPETITION OF THE WRONG. THEY ARE AWARDED UPON THE THEORY THAT THE PUNISHMENT WILL FALL UPON THE OFFENDER, AND NOT UPON AN INNOCENT PERSON, FOR TO PUNISH ONE NOT THE OFFENDER WOULD BE REPUGNANT TO JUSTICE. IT IS CERTAINLY ENOUGH TO REQUIRE THE INNOCENT MASTER TO MAKE FULL COMPENSATION FOR AN INJURY WILFULLY OR MALICIOUSLY INFLICTED BY HIS SERVANT, WITHOUT VISITING UPON HIM THE PUNISHMENT DUE THE SERVANT.

Punishment of the innocent master is not necessary to prevent his repetition of a wrong he never committed, nor would the knowledge that the master will be punished for their evil intent and malice deter the servants from repetition.

In *Fay vs. Parker*, 53 *N. H.*, 342, the Court, Foster, J., reviewing at length and with great ability all the English and American authorities to that date upon question of exemplary damages, holds that such damages, which are in the nature of a fine for the punishment of defendant, cannot be awarded in a civil action founded on a tort punishable by the criminal law, and questions the right of the plaintiff in any civil action to recover punitive or vindictive damages. At

page 397, the Court says: "The true rule, simple and just, is to keep the civil and criminal process and practice distinct and separate. Let the criminal law deal with the criminal, and administer punishment for the legitimate purposes and end of punishment, namely, the reformation of the offender and the safety of the people. Let the individual whose rights are infringed, and who has suffered injury, go to the civil courts and there obtain full and ample reparation and compensation; but let him not thus obtain the 'fruits' to which he is not entitled, and which belong to others.

"Why longer tolerate a false doctrine which in its practical exemplification deprives a defendant of his constitutional right of indictment or complaint on oath before being called into court? deprives him of the right of meeting the witnesses against him, face to face? deprives him of the right of not being compelled to testify against himself? deprives him of the right of being acquitted unless the proof of his offence is established beyond all reasonable doubt? deprives him of the right of not being punished twice for the same offence?

* * * * * *

"Undoubtedly this pernicious doctrine 'has become so fixed in the law,' to repeat the language of Mr. Justice Campbell, of Michigan, 'that it may be *difficult* to get rid of it.' But it is the business of courts to deal with difficulties; and this heresy should be taken in hand without favor, firmly and fearlessly."

The "pernicious doctrine" should not be extended further than it has "become fixed in the law," and certainly not to the extent permitted by the court below in this case, so as to punish not the offender, but his innocent employer, in a civil action, by not only requiring payment of full compensation for suffering, both mental and physical, indignity, humiliation and

injury to feelings, but by the imposition of a fine or penalty in addition thereto.

In *Sedgwick on Damages*, sec. 378, it is said: "It is the better opinion that no recovery of exemplary damages can be had against a principal for the tort of an agent or servant, unless the defendant expressly authorized the act as it was performed, or approved it, or was grossly negligent in hiring the agent or servant, or in not preventing him from committing the act. The burden of showing authorization or approval is upon the plaintiff."

In *McGuire vs. Golden Gate*, 1 *McAllister*, 104-109, the Court held that, in an action against the tortfeasor, exemplary damages could be recovered, and said: "In such actions the damages may be inflicted to teach offenders their duty, but not when the proceedings are against the owners for breach of contract, who, in the language of Judge Washington, 'did not commit or in any manner countenance the wrong, and who, with libelants, are equally entitled to the protection of the law. Such should not be made liable beyond the amount of actual damages, uninfluenced by any considerations of punishing the act of the perpetrator on the ground of breach of contract.'" Citing 3 *Washington*, 362.

The case of *The Amiable Nancy*, 3 *Wheat.*, 546, was a suit for a marine trespass brought against the owners of the private armed vessel "Scourge," and upon the question of exemplary damages, the Court says: "Upon the facts disclosed in the evidence this must be pronounced a case of gross and wanton outrage without any just provocation or excuse. Under such circumstances, the honor of the country and the duty of the court equally require that a just compensation should be made to the unoffending neutrals for all the injuries

and losses actually sustained by them. And if this were a suit against the original wrong-doers, it might be proper to go yet further and visit upon them, in the shape of exemplary damages, the proper punishment which belongs to such lawless misconduct. But it is to be considered that this is a suit against the owners of the privateer, upon whom the law has, from motives of policy, devolved a responsibility for the conduct of the officers and crew employed by them, and yet from the nature of the service, they can scarcely ever be able to secure to themselves an adequate indemnity in cases of loss. They are innocent of the demerit of this transaction, having neither directed it nor countenanced it, nor participated in it in the slightest degree. Under such circumstances we are of the opinion that *they are bound to repair all the real injuries and personal wrongs sustained by the libellants, but they are not bound to the extent of vindictive damages.* While the government of the country shall choose to authorize employment of privateers in its public wars, with the knowledge that such employment cannot be exempt from occasional irregularities and improper conduct, it cannot be the duty of courts of justice to defeat the policy of the government by burdening the service with a responsibility beyond what justice requires, with a responsibility for unliquidated damages, resting in mere discretion, and intended to punish offenders."

Detroit Post vs. McArthur, 16 *Mich.* 447-454.

Hagan vs. P. & W. R. R. Co., 3 *R. I.*, 88. Brayton, J.: "In cases where punitive or exemplary damages have been assessed, it has been done upon the evidence of such wilfulness, recklessness or wickedness on the part of the party at fault as amounted to criminality, for which the good of society and warning to the indi-

vidual ought to be punished. If in such cases, or in any case of a civil nature, it is the policy of the law to visit upon the offender such exemplary damages as will operate as punishment and teach the lesson of caution to prevent a repetition of criminality; yet, we do not see how such damages can be allowed where the principal is prosecuted for the tortious act of the servant, unless there is proof in the cause to implicate the principal and make him *particeps criminis* of his agent's act. *No man should be punished for that of which he is not guilty.*"

Houston & T. C. Ry. Co. vs. Cowser, 57 *Texas*, 293, 306. "Exemplary damages being penal in their character for a *quasi* criminal act involves on the part of him who commits the act the question of an express wilful intent, or that degree of gross negligence which implies it. *This criminal intent* should not by implication be imputed to the principal when the act has neither been authorized nor ratified by him, so as to make it in law virtually his own act."

Pollock & Co. vs. Gault, 69 *Ala.*, 378–9. Principal "not responsible for the malice, vexatious conduct or wantonness of the agent unless he caused or participated in such evil motive, malice or vexatiousness in the agent, and only in him, does not expose the principal to vindictive dam. ges."

To same effect, 7 *Ala.*, 622; 11 *Ala.*, 492; 66 *Ala.*, 406.

Burns vs. Campbell, 71 *Ala.*, 271. Held: Principal not liable "unless the act of the agent was fully ratified with a knowledge of its malicious, aggravating or grossly negligent character."

Grund vs. Van Vleck, 69 *Ill.*, 478, 481. "Where one is innocent of the commission of a wrongful act, and is to be charged only for his subsequent approval

or sanction of it, we know of no rule which would justify the infliction of vindictive damages resting in mere discretion, and intended to punish offenders."

Boulard vs. Calhoun, 13 *La. Ann.* 445, 449. "Smart money cannot be levied upon a master for the act of his slave, to which he was not privy."

In *Craker vs. C. & N. W. Ry. Co.*, 36 *Wis.* 657. "We think that in justice there ought to be a difference in the rule of damages against principals for torts actually committed by agents, in cases where the principal is, and in cases where the principal is not, a party to the malice of the agent. * * * Responsibility for compensatory damages will be sufficient admonition to carrier corporations to select competent and trustworthy officers."

In *Haines vs. Schultz*, 50 *N. J. Law*, 481. "The right to award them (exemplary damages) rests principally upon the single ground—wrongful motive. * * It is the wrongful personal intention to injury that calls forth the penalty. To this wrongful intent knowledge is an essential prerequisite." This case also holds that absence of proof of master's disapproval, or that he had reproached or discharged servant, "in fine, absence of all proof bearing on the essential question, to wit: defendant's motive, cannot be permitted to take the place of evidence without leading to a most dangerous extension of the doctrine *respondeat superior*." Plaintiff must present some proof from which such wrongful motive may be legally inferred.

Ackerson vs. Erie Ry., 32 *N. J. Law*, is to the same effect.

In *G. W. Ry. vs. Miller*, 19 *Mich.* 360, the Court held the railway company was responsible for the *act* of the conductor in expelling a passenger. "But," the Court says, "it does not follow that the responsibility

of his employers is the same as his. For those aggravations which may arise out of his wantonness and malice, we have held that the employer is not on the same footing with the agent."

In *Cleghorn vs. N. Y. C. & H. R. R. R. Co.*, 56 *N. Y.* 44, the New York Court of Appeals, all the judges concurring in the opinion by Church, C. J., held that the rule fairly deducible from the authorities is:

"For injuries by the negligence of a servant while engaged in the business of the master, within the scope of his employment, the latter is liable for compensatory damages; but for such negligence, however gross or culpable, he is not liable to be punished in punitive damages, unless he is also chargeable with gross misconduct. * * * If a railroad company knowingly and wantonly employs a drunken engineer or switchman, or retains one after knowledge of his habits is clearly brought home to the company, or to a superintending agent authorized to employ and discharge him, and injury occurs by reason of such habits, the company may and ought to be amenable to the severest rule of damages; but I am not aware of any principle which permits a jury to award exemplary damages in a case which does not come up to this standard."

In *Denver & Rio Grande R. R. Co. vs. Harris*, 112 *U. S.*, 597, it appeared in proof that the company "by an armed force of several hundred men acting as its agents and employees, and under its vice-president and general manager, attacked with deadly weapons" the agents and employees of another company, and Harris, one of the latter, was fired upon and injured. The Court says the company, by an armed body of men, organized and under the command of its chief officers, proceeded, taking the law into its own hands.

The Court below instructed the jury that they

"could give punitive or exemplary damages if it was found that *the defendant* acted with bad intent, and in pursuance of an unlawful purpose, * * * and in so doing shot the plaintiff," and the charge was sustained, the Court, Harlan, J., using this language: "*The jury were expressly restricted to compensatory damages unless they found from the evidence that the defendant acted with bad intent*, and in pursuance of an unlawful purpose to employ force to dispossess the other company."

"The doctrine of *punitive damages should certainly apply* in a case like this, *where a corporation, by its controlling* officers, wantonly disturbed the peace of the community. * * *

"That the defendant, within the meaning of the rule holding corporations responsible for the misconduct of their servants in the course of its business and of their employment, directed that to be done which was done is not to be doubted from the evidence. * * * *Its governing officers were in the actual command* and directing the movements of what one of the witnesses described as the 'Denver & Rio Grande forces' which were *wantonly organized* for the purpose of driving the other company and its employees by force from the possession of the road in question."

The position taken by the plaintiff in error in the case at bar is strictly in accordance with the doctrine of the case last cited, and the distinction between the two cases is clearly apparent. In the one case the company by its controlling officers, its vice-president and general manager, was in command and directed the commission of the wanton act, while in the case at bar the act of the conductor is not alleged or proved to have been authorized, directed or ratified by the corporation.

The vice-president and general manager of the corporation occupied a position in relation to the matter they had in charge, and to the corporation, entirely different from that occupied by the conductor in the case at bar. The conductor does not appear to have been acting within the scope of any authority conferred upon him, and no such presumption of authority in a subordinate servant exists, as is the case with the president and vice-president.

In *Smith vs. Hall*, 62 *Ill.* 493–6, it was held: "In the absence of legislative enactment or provision made in the by-laws, corporations usually act through their president, or those representing him. He being the legal head of the body, when an act is performed by him the presumption will be indulged that the act is legally done, and is binding upon the body; and as a general rule, in the absence of the president, the vice-president may act in his stead, and perform the duties which devolve upon the president."

To the same effect see 106 *Ill.* 67; 8 *Biss.* (*U. S.*) 523; 87 *N. Y.* 628; *Morawetz on Corp.* 1 *Ed.* § 252.

In *Turner vs. North Beach R. R. Co.*, 34 *Cal.* 594. Held: "To render the defendant liable for punitive damages, it was incumbent on the plaintiff to show that the act complained of was done with the authority, express or implied, of the defendant, or was subsequently adopted by the company. If the act of the conductor was wholly unauthorized, the company is liable for the actual damage, and the conductor alone for the punitive damages, if any."

III.

THE LIABILITY OF A CORPORATION FOR THE ACTS OF ITS SERVANTS THE SAME AS THAT OF A NATURAL PERSON.

In *Denver & Rio Grande R. Co., supra*, the Court quotes and approves the language of the Court in *State vs. Morris & Essex R. Co.*, 23 *N. J. Law*, 369, that "A corporation is liable *civiliter* for torts committed by its servants or agents precisely as a natural person, for the acts of its agents done by its authority."

In *Jeffersonville R. Co. vs. Rogers*, 28 *Ind.* 1–7. "Whatever rule of damages would apply in a suit against a natural person, ought to apply in a suit against a corporation.

In *Hamilton vs. Third Ave. R. Co.*, 53 *N. Y.* 25–29, Grover, J., says: "It is obvious that no distinction can be made in respect to this liability (for exemplary damages), whether the master be a natural or artificial person."

In *P., W. & B. R. R. Co. vs. Quigley*, 21 *How.* 202, Campbell, J., says: "The result of the cases is that for *acts* done by the agents of the corporation, either *in contractu* or *in delicto*, in the course of its business, and of their employment, the corporation is responsible, *as an individual is responsible under similar circumstances.*

The reported cases in which it has been held in some of the State courts, that the rule as to recovery of exemplary damages, differed in suits against corporation and individual employers, state no ground upon which such distinction can be justly or properly maintained. Some of them base the distinction on the ground that

unless the corporation be "held liable for the acts of its employees, the public have neither a remedy nor security." The answer to this is, that the corporation may be, and is, held liable for the *acts* of its servants, and may be compelled to fully *compensate* the injured party, and if punishment of the offender, or recovery of punitive damages is desired, the injured party may prosecute the employee of the corporation, as well as of the individual employer.

In *Goddard vs. G. T. Ry.*, 57 *Me.* 202, a brakeman insulted and grossly maltreated the plaintiff, a passenger. The Court declined a request to charge that if the acts and words of the brakeman were not directly nor impliedly authorized or ratified by the defendant, the plaintiff could not recover exemplary damages.

The plaintiff's counsel insisted that, "If corporations cannot be reached in exemplary damages for the malice of their servants, they escape entirely, and thus stand infinitely better than citizens, who are liable in punitive damages, not only for the malicious acts of their agents, but for their own personal acts" (p. 209), and claimed that if "individual master, perhaps innocent of positive evil intent, is liable to punishment by exemplary damages for the malice of his servant, for how much stronger reason ought a soulless corporation to be held responsible for the wanton and wicked acts of its sole representative."

The Court seems to have been carried away by this appeal, and to have lost sight of the precise question here presented, and finally held and decided: "It is our judgment, therefore, that actions against corporations for the willful and malicious acts of their agents and servants in executing the business of the corporation, *should not form exceptions* to the rule allowing exemplary damages."

The attention of the Court is respectfuly invited to the opinion of the Court at pages 223 and 224, which has been most frequently cited in support of the contention of the defendant in error, and which it is respectfully submitted does not furnish any sound or judicial reason for the decision.

A very able dissenting opinion was written in that case by Tapley, J., at pages 228 to 268, in which he cites and comments upon nearly all the previously reported cases upon the question, and most clearly states reasons in support of his dissent, which have been accepted and approved in many of the cases since decided and hereinabove cited.

The Court seemed to labor under the mistaken idea, that an *exception* in favor of the corporation was sought or contended for; on the contrary, it is not claimed that there should be any exception, but that the rule should be the same as to both corporation and individual employers, and neither should be punished for the motive or intent of which the servant was alone guilty.

GEO. C. GREENE,
Counsel for Plaintiff in Error.

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vs.

CHALMER M. C. PRENTICE,
Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR,

BY

W. A. FOSTER,

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 58.

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In Error to the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF FACTS.

On October 12, 1886, Dr. Prentice, defendant in error, in company with his wife, took passage on one of the trains of plaintiff in error, at Norwalk, Ohio, for Chicago, Illinois.

The train was a regular train, but carried excursion passengers, who were furnished with return tickets good until the following Monday. The tickets were not issued to any particular person, but were good in the hands of any one holding them. (Rec., 10.) Before leaving Norwalk, defendant in error was instructed by two of his friends to procure some tickets of excursionists not de-

siring to use them on the return trip for certain friends of theirs, and this he did on the way.

The fact of his buying tickets of passengers, coming to the knowledge of the conductor of the train, said conductor telegraphed for an officer, and upon the arrival of the train at one of the suburbs of Chicago, called South Chicago, caused the arrest of Dr. Prentice. The arrest was made in an unusally public and insulting manner; defendant in error was standing in the aisle of a car bidding some friends good night, when the conductor exclaimed to the officer in a tone sufficiently loud to be heard in all parts of the car, "That is the man; arrest "him!" (Rec., 12.) Whereupon the officer slapping the doctor heavily upon the breast, on his side and on his hip-pockets, asked the doctor if he had any weapons. When inquiry was made by the defendant in error as to the cause of such treatment, all information was refused. Defendant in error was taken back through the car past his wife, to whom the conductor remarked: "Where is "your doctor now?" In removing the defendant in error to another car, the officer rudely pushed him as if to hurry him along, and hit him on the back. (Rec., 12.) He was refused permission to sit with his wife, and was taken beyond her several seats, and placed in a seat next the window, while the policeman sat next to him, and between him and the aisle, and guarded him during the balance of the journey. He attempted to move his seat and join his wife on several occasions, but was prevented by the officer who stood guard over him. (Rec., 15.) On one occasion the conductor demanded that the prisoner should be taken in the baggage-car, and repeated the order, but defendant in error refused to go, and upon one of the passengers remonstrating with the conductor upon

his harsh treatment, was told both, by the conductor and the policeman, that if he "did not shut up, they would ar- "rest him too." (Rec., 12.)

On arriving at Chicago the prisoner was refused permission to assist his wife from the cars, she being encumbered by four pieces of hand baggage, besides the overcoat of her husband. Defendant in error was handed over to a depot policeman and taken to the police station in the rain, permission to obtain his overcoat being also refused. (Rec., 12.) At the police station he was required to remove his coat and vest and further disrobe, and was searched for railroad tickets, was booked for disorderly conduct, gave bail during the evening, and on the following day, no one appearing to prosecute, he was discharged.

On October 19th defendant in error filed in the Circuit court of the United States for the Northern District of Illinois his declaration setting forth the facts, as hereinbefore narrated, and averring that defendant in error had committed no offense for which he was liable to be arrested; that such arrest was wrongful and unlawful, and was performed in an angry, boistrous and excited manner; that the conduct of the conductor, as stated, was to disgrace and humiliate defendant in error among his fellow passengers; that the conduct towards the wife of defendant in error was in a sneering. vindictive and devilish manner, knowing that it would worry, torture and harass defendant. That the prosecution of defendant in error was fully terminated, and that all the acts done by the officers, agents and employes of the railway company were done within the scope of their employment and in the line of their duty.

ARGUMENT.

But one question arises upon the record, and that is, under the facts, is plaintiff in error liable for punitive damages?

After correctly stating the rule of damages, so far as compensation was concerned, the Circuit court charged the jury in the following words: "And further, after "agreeing upon the amount which will fairly compensate "the plaintiff for his outlay and injured feelings, you may "add something by way of punitive damages against "the defendant, which is sometimes called smart money, "if you are satisfied that the conductor's conduct was il- "legal (and it was illegal), wanton and oppressive. How "much that shall be the court cannot tell you. You "must act as reasonable men and not indulge vindictive "feelings toward the defendant.

"If a public corporation, like an individual, acts op- "pressively, wantonly, abuses power, and a citizen in that "way is injured, the citizen, in addition to strict compen- "sation, may have, the law says, something in the way "of smart money; something as punishment for the "oppressive use of power."

I.

MASTER'S LIABILITIES FOR ACTS OF SERVANTS APPLIES ALIKE TO CORPORATIONS AND INDIVIDUALS.

That a master is liable for the trespass of his servant in the line of his employment, although willful on the part of the servant we assume is no longer an open question under the decisions in this country and in England.

That the liability of corporations for the acts of servants is the same as that of natural persons, may be conceded, and has recived the sanction of this court in

National Bank v. *Graham*, 100 U. S., 699-702.

Denver, etc., Ry. v. *Harris*, 122 U. S., 597.

In the latter case, Justice HARLAN, speaking for the court, says: "In *State* v. *Morris & Essex Railroad*, 23 "N. J. Law (2 Zabriski), 369, it was well said that, "'If a corporation has itself no hands with which to "strike, it may employ the hands of others; and it is "now perfectly well settled, contrary to the ancient "authorities, that a corporation is liable *civiliter* for all "torts committed by its servants or agents by authority "of the corporation, express or implied. * * * The "result of the modern cases is, that a corporation is liable "*civiliter* for torts committed by its servants or agents "precisely as a natural person and that it is liable as a "natural person for the acts of its agents done by its "authority, express or implied, though there be neither "a written appointment under seal nor a vote of the cor-"poration constituting the agency or authorizing the act.' "See also *Salt Lake City* v. *Hollister*, 118 U. S., 256, "260; *New Jersey Steam Boat Company* v. *Brockett*, "121 U. S., 637: *National Bank* v. *Graham*, 100 U. S., "699, 702."

II.

AUTHORITY BY THE PRINCIPAL IS IMPLIED WHEN THE SERVANT IS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT.

No objection will be urged against the citation of authorities by counsel in brief for plaintiff in error tending to establish the rule that the principal is not liable in exemplary damages for the negligence of his servant or agent, unless there was express or implied authority for such negligence; but it is urged that such authority is *always implied* where the servant is acting within the scope of his employment, and that exemplary damages lie when the act of the servant was illegal, wanton and oppressive.

In Woods' Law of Master and Servant, 2d Ed., Sec. 276, page 525, the author says: "This leads us then to "the general and inflexible rule controlling in all such "cases, and that is, that for all acts done by the servant "under the express orders or direction of the master, as "well as for all acts done in the execution of his master's "business within the scope of his employment, the mas-"ter is responsible, but, when the act is not within the "scope of his employment, or in obedience to the mas-"ter's orders, it is the act of the servant and not of the "master, and the servant alone is responsible therefor," and cases cited.

Again, in Sec. 300 the same author says: "If it" (the act) "was done in the course of the servant's employ-"ment, and in furtherance thereof, the law will regard "the act as having been *impliedly authorized by the mas-"ter.*"

It is not necessary to show express authority by the corporation. Was the act done in the interest of the company?

2 Beach on Private Corporations, Sec. 443 and 444.

Denver, etc. Ry. v. *Harris, supra.*

III.

PUNITIVE DAMAGES PROPERLY ALLOWED IN THE CASE AT BAR.

It is submitted that the authorities cited by counsel for plaintiff in error denying punitive damages are either distinguishable from the case at bar upon the facts, or are from exceptional states that have adopted a different rule of damages from the great majority of courts, and from the rule adopted by this court.

In *Craker* v. *Railway Company*, 36 Wis., 657, exemplary damages were denied, yet the court, through Justice RYAN, says (page 676): "We are aware that there is "authority, and perhaps the greater weight of authority, "for exemplary damages in such cases, without privity "of the principal to the malice of the agent; and that "reasons of public policy are strongly urged in support "of such a rule."

Mr. Justice DAVIS, speaking for this court in *Milwaukee &c. R. R. Co.* v. *Arms*, 91 U. S., 489–492, says: "It is "undoubtedly true that the allowance of anything more "than an adequate pecuniary indemnity for a wrong "suffered is a great departure from the principle on "which damages in civil suits are awarded. But, al-"though, as a *general rule*, the plaintiff recovers merely

"such indemnity, yet the doctrine is too well settled now "to be shaken, that exemplary damages may in certain "cases be assessed, * * * and, although some text-"writers and courts have questioned its soundness, it has "been accepted as a general rule in England and in most "of the states of this country. 1 Redf. on Railw., 576; "Sedg. on Measure of Dam., 4th ed., ch. 18, and note, "where the cases are collected and reviewed. It has "also received the sanction of this court. Discussed and "recognized in *Day* v. *Woodworth*, 13 How., 371, it was "more accurately stated in *The Philadelphia, Wilming-"ton & Baltimore R. R. Company* v. *Quigley*, 21 How., "213. One of the errors assigned was that the Circuit "court did not place any limit on the power of the jury "to give exemplary damages, if in their opinion they "were called for.

"Mr. Justice CAMPBELL, who delivered the opinion of "the court, said: 'In *Day* v. *Woodworth*, this court "recognized the power of the jury in certain actions of "tort to assess against the tort-feasor punitive or exem-"plary damages. Whenever the injury complained of "has been inflicted maliciously or wantonly, and with "circumstances of contumely or indignity, the jury are "not limited to the ascertainment of a simple compensa-"tion for the wrong committed against the aggrieved "person. But the malice spoken of in this rule is not "merely the doing of an unlawful or injurious act; the "word implies that the wrong complained of was con-"ceived in the spirit of mischief, or criminal indifference "to civil obligation.'

"As nothing of this kind, under the evidence, could "be imputed to the defendants, the judgment was re-"versed.

"Although this rule was announced in an action for "libel, it is equally applicable to suits for personal injuries received through the negligence of others. Redress commensurate to such injuries should be afforded. "In ascertaining its extent, the jury may consider all "the facts which relate to the wrongful act of the defendant, and its consequences to the plaintiff; but "they are not at liberty to go farther, unless it was done "wilfully, or was the result of that reckless indifference "to the rights of others which is equivalent to an intentional violation of them. In that case, the jury are authorized, for the sake of public example, to give such "additional damages as the circumstances require. The "tort is aggravated by the evil motive, and on this rests "the rule of exemplary damages."

The case was reversed because there was no evidence of willful misconduct on the part of the employers of the company. The damages sought to be recovered resulted from a collision of trains, and there was no proof of wanton conduct on the part of the employes of the railway company.

In *Galena* v. *Hot Springs Railroad*, 13 Fed. Rep., 116–119, Caldwell, J. says: "Where the legal right to "eject or remove a passenger from the car exists, the "law does not invest the conductor with the power to "effect the removal at such place and in such mode and "manner as his whim, caprice, or malice may dictate or "suggest. But the removal must be effected at a proper "place and with no more confusion, force, or violence "than is reasonably necessary for the purpose. This is "due to the other passengers on the train, no less than "the passenger ejected. Especially is this rule applicable "to a case where the passenger is on the train in good

"faith, holding a ticket for which he has paid the required "price, but which he cannot legally require the conductor "to honor, on account of a mere oversight to comply "with some of its numerous conditions, or an honest in- "terpretation of them on his part, or more likely from an "utter ignorance of their existence. A passenger on a "train under such circumstances is not to be regarded or "treated as though he were a felon or an outlaw."

In the case at bar Dr. Prentice was a passenger without a question as to his right to be carried and protected from insult or indignity. There was no question with reference to his ticket, he had violated no rule of the company, was guilty of no crime, nor had he demeaned himself in any improper manner, or was he in any way obnoxious to his fellow-passengers. The treatment that he received was worse than that bestowed upon the ordinary felon. He was publicly pointed out, and a command for his arrest given in tones which called attention to him from all occupants of the car. He was searched for weapons publicly, as if he were a desperado. He was pushed through cars like a thief, separated from his wife, as if to prevent a conspiracy to escape, guarded like a murderer and carried to the station in the rain without leave to obtain his overcoat, as one who had forfeited all right to considerations of humanity. (Rec., 11-13.)

IV.

THE ACTS OF THE CONDUCTOR WERE WITHIN THE SCOPE OF HIS EMPLOYMENT.

It is nowhere urged by counsel for plaintiff in error that the acts committed by its conductor were not done and committed in the direct line and within the scope of his employment.

In *Ramsden et ux.* v. *Boston & Albany R. R. Co.*, 104 Mass., 117, where a conductor seized the parasol of a lady passenger as security for fare. The court below held that no recovery could be had because no authority expressed or implied existed on the part of the conductor to seize the property of a passenger for the payment of fare, but on appeal, GRAY, J. says: "The use of unwarrantable violence in attempting to collect fare of the plaintiff "was as much within the scope of the conductor's employment as the exercise or threat of unjustifiable force "in ejecting a passenger from the cars."

In *Howe* v. *Newmarch*, 12 Allen, 49, HOAR, J., says: "But if the master gives an order to a servant which implies the use of force and violence to others, leaving to "the discretion of the servant when the occasion arises to "which the order applies, and the extent and kind of force "to be used, he is liable if the servant, in executing the "order, makes use of force in a manner or to a degree "which is unjustifiable."

In *Limpus* v. *London General Omnibus Co.*, 1 H. & C., 528, the driver of an omnibus was specifically instructed by his principal not to obstruct any omnibus, but drove in front of one to keep it from passing him. It was held that the defendant was liable, as the act was carrying out the master's purpose in attempting to get before the other omnibus and pick up passengers.

In *Seymour* v. *Greenwood*, 6 H. & N., 356, the guard in charge of defendant's omnibus wrongfully ejected plaintiff. Upon appeal to the Exchequer chamber, WILLIAMS, J., in pronouncing the opinion of the court affirming the judgment of the lower court, says: "We are "all of opinion that the judgment of the Court of Exchequer ought to be affirmed. We think that there was

"evidence for the jury that the guard, acting in the course "of his service as guard of the defendant's omnibus, and "in pursuance of that employment, was guilty of excess "and violence not justified by the occasion, or, in other "words, misconducted himself in his master's employment, "and therefore the master is responsible. * * * It "is said that, although it cannot be denied the defendant "authorized the guard to superintend the conduct of the "omnibus generally, and that such authority must be "taken to include an authority to remove any passenger "who misconducts himself; yet the defendant gave no "authority to remove an inoffensive passenger, and the "plaintiff was one. But the master, by giving the guard "authority to remove offensive passengers, necessarily "gave him authority to determine whether any passenger "had misconducted himself. It is not convenient for the "master to conduct the omnibus himself, and he puts the "guard in his place; therefore, if the guard forms a "wrong judgment, the master is responsible."

A clerk in a gun store was instructed by his master not to load any of the fire-arms, but did so at the suggestion of a customer, and a third party was shot. "It "was urged in defense that the act of the servant being "in conflict with and contrary to the master's orders, it "was not an act within the scope of the servant's au- "thority, and the master could not be held liable there- "for. But the court held that, notwithstanding the ex- "press order of the defendant, the act was done in the "prosecution of his business and in furtherance thereof, "and was within the scope of the servant's employment. "It is of no account that the master did not direct the "doing of the act, or even that it was done contrary to "his instructions, or without his knowledge; the simple

" question is, whether it was done in the prosecution of " his business, and as an incident thereto."

Garretzen v. *Duenckel*, 50 Mo., 104.

Judge Shiras of the Northern district of Iowa, held that the assault by a colored porter of a sleeping car upon a lady passenger was an act for which his principal was liable.

Campbell v. *Pullman Palace Car Co.*, 42 Fed. Rep., 484.

It must be conceded that the entire management and conduct of the train was under the conductor's direction. It was his duty to preserve order, protect passengers from imposition and insult, eject persons who disobeyed the reasonable rules of the company or who were obnoxious to the persons under his care, to cause to be apprehended all violators of law, and to do everything calculated to render the transportation most comfortable and least annoying to passengers.

The consideration due the public who place themselves under the protection of the conductor of a railway train, is the same as if the carriage was by water, in which case, as stated by the court in *Chamberlin* v. *Chandler*, 3 Mason, 242:

" It is a stipulation, not for toleration merely, but for " respectful treatment, for that decency of demeanor " which constitutes the charm of social life, for that at- " tention which mitigates evils without reluctance, and " that promptitude which administers to distress."

That the arrest and treatment of defendant in error was wrongful, and that he is entitled to recover, therefore is expressly admitted of record. (Rec., 10.)

That the conductor was the chosen representative of the corporation cannot be denied. Justice RYAN, in *Cracker* v. *Milwaukee R. R. Co. supra*, said:

"The contract of carriage was very surely the contract "of appellant, not of the agent who sold the ticket. It "rested with the appellant to perform it by agents of its "own choice, on its own responsibility. It chose the of- "ficers of the train, with the conductor at their head, to "perform its contract for it. Where was the corpora- "tion, and by whom represented, as to this contract and "this passenger? Not, surely, in some foreign board- "room, by directors making regulations and appointing "agencies for the corporate business. They could not "perform this contract. Not, surely, in some distant of- "fice, by a superintendent or manager issuing the orders "of the directors to his subordinates. He could not per- "form this contract. *Quoad* this contract and this passen- "ger, the corporation was present on this train to keep it "and to care for her, represented by the officers of the "train, who possessed *pro hac vice*, the whole power and "authority, and were the living embodiment of the ideal "entity which made the contract, was bound to keep it, "and is appellant here to contend that it has no responsi- "bility for the flagrant violation of the contract, which the "respondent paid it to make and to keep, by its sole pres- "ent representative appointed to keep it on its behalf?"

Counsel for plaintiff in error has attempted to distinguish this case from *Denver, etc., Ry.* v. *Harris*, 122 U. S., 597, where the act committed was under the vice-president and general superintendent of the railway, but if the reasoning of Justice Ryan, above quoted, is sound, the conductor in the case at bar was as much the controlling officer, so far as the train upon which defendant in error was

riding is concerned, as was the vice-president and general superintendent, while directing the employes of their road in the case referred to, where Mr. Justice HARLAN says: "The doctrine of punitive damages should cer- "tainly apply in a case like this, where a corporation, by "its controlling officers, wantonly disturbed the peace of "the community, and by the use of violent means endan- "gered the lives of citizens, in order to maintain rights, "for the vindication of which, if they existed, an appeal "should have been made to the judicial tribunals of the "country."

In the case of *Krulevitz* v. *Eastern R. R. Co.*, 140 Mass., 573, the passenger was riding from Lawrence to Salem without a proper ticket. The conductor telegraphed to the police at Salem, and had the passenger arrested and carried to the police station, where he was confined for a time, and subsequently discharged. Suit was brought for assault and malicious prosecution. It was not contended that the conductor used unnecessary force making the arrest, nor that the plaintiff was in fault, except by not paying his fare when demanded. Upon these facts the court below directed a verdict for the defendant. On appeal, C. ALLEN, J., says: "The "defendant's counsel contends that the ticket did not en- "title the plaintiff to be carried the second time from "Lawrence to Salem, and the cases cited by him well "support this proposition. The plaintiff, indeed, no "longer controverts it; but now insists that he may never- "theless prevail by proving that the conductor acted "without probable cause and maliciously, and that there "was sufficient evidence for the jury on these points, *and* "*in this we agree with him. Ripley* v. *McBarron*, 125 "Mass., 272. Want of probable cause and malice on

" the part of the conductor, if established, may be imputed " to the corporation. *Reed* v. *Home Savings Bank*, 130 " Mass., 443."

It is respectfully submitted that the conductor's acts were within the scope of his employment, for which plaintiff in error is liable, and that, such acts being illegal, wanton and oppressive, the Circuit court could properly award punitive damages.

W. A. FOSTER,
Counsel for Defendant in Error.

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REPLY TO BRIEF OF DEFENDANT IN ERROR.

The brief filed by the defendant in error does not meet the real question involved in this case.

I do not question the *First* proposition stated, but concede and claim that the

"Master's liability for *acts* of servants applies alike to corporations and individuals."

Nor do I question the *Second* proposition that

"Authority of the principal is implied when the servant is acting within the scope of his authority," when qualified as it is by the authorites cited under it, limiting its application to *acts* of the servant.

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The *Third* proposition,

"Punitive damages properly allowed in the case at bar," is not supported by any case cited, nor by any principal or reason stated in the brief. On the contrary, the cases cited, so far as they bear upon or decide the question here involved, support the contention of the plaintiff in error.

In Craker vs. Ry. Co., 36 *Wis.* 657, the Court used the language quoted, but immediately proceeds to hold that there ought to be a difference in the rule of damages against principals for torts committed by agents in cases where the principal is, and in cases where the principal is not, a party to the malice of the agent, and that

"In the former class of cases the damages go upon the malice of the principal; malice common to principal and agent. In the latter class of cases the recovery is for the *act* of the principal through the agent, in malice of the agent not shared by the principal; *the principal being responsible for the act, but not for the motive of the agent.*" (See page 676.)

From in the middle of the quotation from the *Arms* case, at page 8 of the brief, where the asterisks occur, the following, a most material portion of the opinion, and of the paragraph from which quotation is made, is omitted.

"As the question of intention is always material in an action of tort, and as the circumstances which characterize the transactions are, therefore, proper to be weighed by the jury in fixing the compensation of the injured party, it may well be considered whether the doctrine of exemplary damages cannot be reconciled with the idea that compensation alone is the measure of redress.

"But jurors have chosen to place this doctrine on the ground not that the sufferer is to be recompensed, but that the offender is to be punished, and"

(Here follows latter part of quotation.)

It was held in the *Arms* case that the plaintiff was not entitled to recover exemplary damages, but the Court with apparent reluctance recognizes the fact that the doctrine seems established that such damages may *in certain cases* be recovered. I do not question the soundness of that conclusion, but insist that neither that case, nor any other well-considered case, supports the recovery of exemplary damages in the case at bar.

In the case at bar the Court instructed the jury that the plaintiff might recover a verdict which would compensate him:

1. For injuries sustained;
2. Beyond amount expended for counsel;
3. Beyond actual outlay he has made;
4. For humiliation of feelings;
5. For public humiliation and mental anguish;
6. For humiliation of spirit;

And further, after all that,

7. You may add something by way of punitive damages.

It would seem that in the language of this Court, in the *Arms* case, "It may well be considered whether the doctrine of exemplary damages cannot be reconciled with the idea that compensation alone is the measure of redress."

The jury were not only given unlimited sway in determining the amount of a verdict based on compensation, but were again let loose to discover a sum to be added as punitive damages.

"The circumstances which characterized the transaction" (the same upon which charge of wantonness is based), being "proper to be weighed by the jury in fixing the *compensation* to the injured party" for injuries sustained, money expended for counsel, for humiliation of spirit and feelings, and for public humiliation and mental anguish, it certainly would seem that the employer, innocent of malice or evil intent, should not be subjected to any additional burden or punishment, but that the compensation fixed in view of and enhanced by the aggravating circumstances, "is the measure of redress."

In the *Quigley* case (cited in *Arms* case) the action was against a corporation for libel, contained in communication from the president and board of directors to shareholders of the corporation.

The Court below charged that the plaintiff might recover exemplary damages, and this Court held it was error, and that such damages were not recoverable in that case.

The question here presented, as to the liability of the employer in punitive damages for the *evil intent* of the employee, was not in the case, nor was it passed upon in the *Arms* case, nor in *Day vs. Woodworth*.

The counsel fees of the plaintiff, which the Court in the case at bar instructed the jury to allow, could only be allowed as exemplary damages.

The Court charged they could be allowed as compensation, or that in addition thereto exemplary damages might be allowed.

In *Day vs. Woodworth*, 13 *How.* 371–2, the Court refused to instruct the jury that they could allow counsel fees, and this Court sustained the refusal, and held that such costs could not be recovered as actual

damages, but that in a proper case for recovery of exemplary damages the plaintiff may thus be indirectly compensated for counsel fees.

In *Galena vs. Hot Springs R. R.*, 13 *Fed. R.* 116, it does not appear that the question here presented was raised or considered. The authority is that of a charge by the District Judge of E. D. Arkansas in a trial at Circuit, but I do not question the soundness of the quotation contained in brief.

The Fourth Proposition:

"The acts of the conductor were within the scope of his employment," is not controverted.

However, as in the discussion following the statement of the proposition, and in the citation of cases, the learned counsel fails to distinguish between liability for *acts* and for *evil motive*, I may be permitted briefly to refer to the cases cited and to the argument.

I have carefully examined the following cases so cited and find that they are silent on the subject of exemplary damages, and have no bearing upon the question here involved: 104 *Mass.* 117; 12 *Allen*, 49; 1 *H. & C.* 528; 6 *H. & N.* 356; 50 *Mo.* 104; 3 *Mason*, 242; 140 *Mass.* 573; 125 *Mass.* 272; 130 *Mass.* 443.

In the last case cited, 130 *Mass.*, the Court (p. 447) said it had before it "simply the question, whether, if the proof is sufficient to show that the defendant, as a corporation, did all the acts which in an individual would create the liability, such liability would exist in the corporation."

In *Campbell vs. Pullman Co.*, 42 *Fed. Rep.* 484, the company's porter made an indecent assault upon a female passenger, and the Court, Shiras, J., charged the jury that "the plaintiff is entitled to be fairly